

BILL NO. 11-76

Introduced: April 6, 1976
Enacted: December 14, 1976
Executive: December 27, 1976
Effective: March 13, 1977

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
April Legislative Session 1976
Chapter 27

AN ACT to add a new Article IV, title "Employer-Employee Relations Act," to Chapter 33, title "Personnel" of the Montgomery County Code, 1972, as amended, to provide for the election and certification of employee organizations for the purposes of meeting with County officials concerning conditions of employment and the resolution of grievances; to provide for the designation of employee units from which such employee organizations are elected and which such organizations represent; to provide for the recognition of such employee organizations by the County; to provide for the preparation of position papers by the County and such employee organizations; to provide for procedures for the decertification of employee organizations; to define certain terms; to provide for the Chief Administrative Officer to finally resolve disputes arising under this Article; to specify responsibilities of the County and the employee organizations; to provide for the protection of those County employees who choose not to become members of an employee organization; and to provide for the retention of existing personnel laws and regulations and the option of any employee to pursue a grievance through procedures set forth therein.

Be It Enacted by the County Council for Montgomery County, Maryland, that

Sec. 1. Chapter 33, title "Personnel," of the Montgomery County Council is hereby amended to add a new Article IV, title "Employer-Employee Relations," to the Montgomery County Code 1972, as amended, after Article III thereof, and to read as follows:

ARTICLE IV

EMPLOYER-EMPLOYEE RELATIONS

33-62. Statement of Legislative Intent.

The County Council hereby finds that the trend in labor relations between government and its employees is becoming somewhat aligned with the practices of the private sector of representation of employee groups by designated and elected employee organizations. The Council believes that government should take the initiative in providing a vehicle whereby government employee representation can emerge and evolve in a fashion consistent with both the needs of the employee and those of government. The Council further believes that this can best be accomplished by enacting local legislation which provides for the voluntary representation of government employees by their duly designated and elected employee organizations. The Council also believes that the efficient administration of the County government is enhanced by providing employees an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of their employment. Because the Council believes it is desirable to minimize the proliferation of employee units, it has limited the number of such units to seven; however, the Council would consider changing that limitation at a future date upon the recommendation of the Chief Administrative Officer or an affected group of employees. The Council further states that the eligibility as to membership in an employee unit for purposes of this meet-and-confer type of employee representation would not necessarily be extended in the same manner if authority for collective bargaining were granted. Membership or non-membership in an employee organization shall in no way limit the ability of an employee to obtain government information to which he/she would normally have access. Nothing in this Article shall restrict the ability of any employee, whether member or non-member of an employee organization, to discuss matters concerning employees or employee groups to the extent that such discussion does not conflict with the duties and responsibilities of the employee.

33-63. Definitions.

As used herein, the following words and phrases shall be defined as follows:

- a. "Certification" -- the procedure whereby employee organizations are elected and recognized to represent employee units.
- b. "Decertification" -- the procedure by which the Chief Administrative

Officer withdraws County recognition of an employee organization, with or without an election by the employees of an employee unit.

c. "Employee" -- Any County merit system employee working on a continuous full-time, career or part-time, career basis, eligible to be included in a unit of recognition except for the following:

- (1) Confidential aids to elected officials;
- (2) All non-merit system employees;
- (3) All heads of principal departments, offices, and agencies;
- (4) Deputy or assistant department heads;
- (5) Employees providing direct staff or administrative support to the director of the department, or deputy or assistant directors within the director's immediate office;
- (6) Employees who report directly to or whose immediate supervisor is the County Executive, County Council, County Councilmembers or the Chief Administrative Officer and the principal aides to the foregoing;
- (7) Employees of the Office of the County Attorney;
- (8) Employees of the Office of Budget and Research;
- (9) Employees of the Office of Employee Relations;
- (10) Employees of the Personnel Office;
- (11) Employees of the Personnel Board;
- (12) Heads of the following constituent offices, divisions and sections in the Department of Transportation existing at the time of enactment of this bill and positions carrying a similar degree of personnel management responsibilities in other departments and offices as determined by the Chief Administrative Officer:

Director's Office, Office of the Right of Way Acquisition, Office of Administrative Services, Office of Transportation Planning, Division of Transportation Engineering, Subdivision Development Section, Design Section, Construction Section, Division of Traffic Engineering, Traffic Planning and Survey Section, Traffic Operations Section, Division of Operations, TESS Minibus, Highway Maintenance Section, Equipment Section, and Division of Parking Lot Districts.

d. "Employee organization" -- any lawful organization which represents employees in their employment relations with the County. The term "employee organization" does not include any organization which:

(1) discriminates with regard to terms and conditions of membership with regard to race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

(2) does not adhere to democratic procedures and practices with regard to election of officers, individual participation in organizational affairs, equal treatment under its bylaws, including dues processing, and disciplinary procedures; or

(3) does not maintain fiscal integrity in the conduct of the affairs of the organization, including accounting controls and regular financial reports to members.

e. "Employee unit" -- groupings of employees for purposes of representation in County/employee relations.

f. "Position paper" -- a non-binding written memorandum reflecting all items discussed by the County and an employee organization.

g. "Uniformed services" -- those activities engaged in the protection of life and property, law enforcement or correctional activities, and whose employees have as their primary duties and responsibilities the operational activities of such public safety activities.

33-64. Employee rights.

a. An employee shall have the right, freely and without fear of penalty or reprisal, to form, join or assist and be represented by an employee organization or to refrain from any such activity.

b. Each employee shall have the right to be represented by employee organizations, including the right to meet with representatives of the County concerning conditions of employment and the resolution of grievances.

c. Nothing in this Article shall preclude the rights of an employee to pursue an individual grievance through established administrative procedures or through appeal to the Personnel Board, in that nothing in this Article shall circumvent or shall be deemed to supersede or annul the provisions of the Laws of the State of Maryland, the Montgomery County Charter, and the Laws and Ordinances of Montgomery County including the Personnel Regulations.

d. No employee, who is not a member of an employee organization shall ever be required to become a member of such an organization or to pay money to such an organization, except on a purely voluntary basis.

33-65. Determination of employee units.

a. The Chief Administrative Officer shall make the final determination as to the composition of employee units. In undisputed cases, the determination of appropriate units shall be made by the Chief Administrative Officer within thirty (30) calendar days after receipt of a request for certification under Section 33-66 of this Article.

b. Employee units may be established on the basis of groupings of employees who share a clear and identifiable community of interest. Such factors as those employees sharing common skills, working conditions, physical locations, organizational structures, and integrated work processes shall be considered. A unit shall not be established solely on the basis of the extent to which employees in a proposed unit have organized.

c. Determination of units shall be made so as to include the largest possible numbers of employees consistent with maintaining a community interest of employees to avoid proliferation and fragmentation of representative units. The provisions of this Section shall not preclude the establishment of one unit to represent all eligible employees. The number of units certified shall not be greater than seven.

d. Units for employees of the uniformed services shall be limited to employees in the ranks of Corporal or equivalent rank and below.

e. In cases where the matters of unit determination are questioned, the decision of the Chief Administrative Officer shall be final after opportunity is provided for those disputing the determination to be heard by the Chief Administration Officer.

33-66. Procedures for certification of employee organizations.

a. Initially or where there is no official representative employee organization, the Chief Administrative Officer, upon petition of an employee organization showing written evidence of interest by at least thirty percent (30%) of the employees of the employee unit, shall arrange for the conducting of a secret ballot

election to determine whether the employees desire such organization to act as their representative. Following such petition, the Chief Administrative Officer shall give an appropriate notice to the employees involved.

b. An employee organization seeking to represent an employee unit shall submit to the Personnel Office a roster of its officers and representatives, a copy of its constitution and bylaws, and a schedule of dues for its members.

c. Eligibility to vote in any election for choice of an official representative shall be limited to employees who are filling County positions as of the beginning of the pay period preceding the election date.

d. Elections will be conducted by the Personnel Office which may use the services of the Maryland State Division of Labor and Industry or any other third party having similar qualifications.

e. The ballot shall contain the name of any additional employee organization showing timely written evidence of interest by at least ten percent (10%) of the employees within the appropriate employee unit. In every instance, the ballot shall contain a provision for a marking of "no representation." Where more than one employee organization is on the ballot and no one of the organizations receives a majority vote of the employees voting, a runoff election shall be held. The runoff election shall contain the two choices which received the largest and second largest number of votes in the original election.

f. When an organization receives a majority of valid votes cast in the election and when at least sixty percent (60%) of the employees eligible to participate in the election cast valid ballots, the Chief Administrative Officer shall certify it as the official employee organization for the employee unit.

g. The County shall recognize as the official employee relations representative an employee organization which has been selected in accordance with procedures outlined in this Section 33-66.

h. Recognizing an employee organization does not preclude the County from dealing with religious, social, fraternal, professional or other lawful associations with respect to matters or policies which involve individual members of the associations or are of particular applicability to it or its members.

i. No question concerning certification may be raised by an employee or an employee organization within one (1) year of the date of certification of an employee organization or the date that a majority of the employees voting voted for no representation.

j. The County may, after discussions with an employee organization and on the basis of written authorization from each employee, provide for deduction from the pay of such employee monies in payment of membership dues in a duly certified employee organization. Such monies shall be remitted to the employee organization.

33-67. Procedure for decertification of employee organizations.

a. An employee organization shall be subject to decertification when thirty percent (30%) of the employees in the employee unit petition for the employee organization to be decertified. The procedures for determining whether, in fact, an employee organization shall be decertified shall be the same as those prescribed in Section 33-66 for the certification of an employee organization, except as provided in subsection b of this Section 33-67.

b. If an employee organization fails to adhere to any of the provisions of Section 33-73 dealing with employee organization responsibilities, then:

- (1) its certification may be revoked by the Chief Administrative Officer after notice and an opportunity to be heard, and
- (2) it may be disqualified by the Chief Administrative Officer from participating in representation elections for a period of up to two (2) years after notice and an opportunity to be heard.

33-68. Costs of conducting elections.

Any cost of conducting a secret ballot election under this Article shall be borne 50% by the County and 50% borne equally by the employee organization(s) whose name(s) appear on the ballots.

33-69. County-employee organization meetings and discussions.

a. An employee organization which has been recognized by the County pursuant to Section 33-66 shall be entitled to meet at reasonable times with County representatives to discuss with such representatives personnel policies,

practices and matters affecting working conditions of the employee unit it represents, so far as discussions may be appropriate under existing laws or regulations. The County shall meet at least two times annually with each certified employee organization.

b. The requirement to meet shall not obligate either the County or an employee organization to agree to any proposal or to make any concession with respect to any matter discussed by the parties at such a meeting. Any decision made at any such meeting is in no way binding upon the parties.

c. The County and an employee organization may, if desired, and at the conclusion of their discussions, jointly or separately, prepare written position papers which reflect for future reference the respective positions of the parties on the issues discussed at such meetings. Such position papers shall in no way legally bind any party to the matters expressed therein and the County shall not be obligated to concur in a position paper addressing the inherent right to manage the County Government.

33-70. Employee organization representation of employee members.

a. An employee who is a member of an employee organization may request and shall be granted the right for a member or representative of such organization to be present in any discussions or counseling with County representatives concerning an individual grievance.

b. An employee organization may submit a grievance concerning any dispute involving a claim of violation, misinterpretation or misapplication of the Personnel Regulations or work practices of the County on the same basis as provided for individual grievances.

33-71. Disputes.

All decisions of the Chief Administrative Officer under the provisions of this Article shall be final, subject to appeal to the Montgomery County Personnel Board where provided by law.

33-72. County responsibilities.

It shall be the responsibility of the County not to:

a. Interfere with, restrain, or coerce an employee in the exercise

of the rights assured by this Article;

b. Encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment;

c. Sponsor, control or otherwise assist an employee organization, except that the County may furnish customary and routine services and facilities when consistent with the best interest of the County, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

d. Refuse to accord appropriate recognition to an employee organization qualified for such recognition; or

e. Refuse to consult, confer, or meet with an employee organization certified pursuant to this Article.

33-73. Employee organization responsibilities.

It shall be the responsibility of every employee organization not to:

a. Interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Article;

b. Attempt to induce the County to coerce an employee in the exercise of the rights under this Article;

c. Coerce, attempt to coerce, or discipline, fine, or take other economic sanction against an employee member of an employee organization as punishment or reprisal, or for the purpose of hindering or impeding work performance or the discharge of duties owed as an employee of the County;

d. Call or engage in a strike, work stoppage, or slowdown, picket the County in connection with a strike, work stoppage or slowdown in a County-employee dispute, or condone any such activity by failing to take affirmative action to prevent or stop it;

e. Discriminate against an employee with regard to the terms or conditions of membership because of race, color, religion, creed, sex, age, national origin, ancestry, or marital status;

Sec. 2. Severability.

The provisions of this Act are severable and if any provision, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words, or parts of the Act or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Act would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, section, word or part had not been included therein, and if the person or circumstances to which the Act or part thereof is inapplicable had been specifically exempted therefrom.

Sec. 3. Effective Date

This Act shall take effect on the 76th day following the date on which it becomes law.

APPROVED:

John L. Menke Dec 17, 1976
President, Montgomery County Council Date

James T. Shuman Dec. 27, 1976
County Executive Date

ATTEST:

Carl J. Steele Dec. 27, 1976
Deputy Secretary of the Council Date